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NO. 92-6281

IN THE SUPREME COURT

OF THE

UNITED STATES OF AMERICA

October Term, 1992

ROBERT P. HAGEN,

PETITIONER,

VS.

STATE OF UTAH,

RESPONDENT.

SUPPLEMENTAL BRIEF FILED BY PETITIONER

Petitioner, Robert P. Hagen, respectfully submits this supplemental brief.

Since petitioner filed a supplemental brief on November 30, 1992, the Honorable Bruce S. Jenkins of the United States District Court for the District of Utah issued an order in Case No. 75-C-408J, a copy of which is attached hereto as Exhibit A. Of interest is the court's statement on the bottom of page 3 of the order that the district court believes that this court should decide the issue presented to it in the Petition for Writ of Certiorari filed by petitioner.

CONCLUSION

Based on the briefs filed by the parties and others in this matter the petitioner urges that his Petition for a Writ of Certiorari be granted.

DATED this 2 day of April, 1993.

Joel D. Berrett
Attorney for Petitioner

FILED
UNITED STATES
DISTRICT COURT
DISTRICT OF UTAH
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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

UTE INDIAN TRIBE of the Uintah and Ouray Reservation, Utah, Plaintiff, vs. STATE OF UTAH, Defendant-in-Intervention, and, DUCHESNE COUNTY, a political subdivision of the State of Utah; UINTAH COUNTY, a political subdivision of the State of Utah; ROOSEVELT CITY, a municipal corporation; and DUCHESNE CITY, a municipal corporation, Defendants. UNITED STATES OF AMERICA and PARADOX PRODUCTION CORPORATION, a Utah corporation, Amici Curiae.	ORDER Case No. 75-C-408J

On August 3, 1992, the Ute Indian Tribe of the Uintah and Ouray Reservation in the State of Utah (the "tribe"), filed a Motion with this court seeking a temporary restraining order pending a hearing on the Tribe's motion for injunctive relief. The

matter came on for hearing on August 6, 1992. At the hearing, the State of Utah agreed, on behalf of itself and its political subdivisions, to refrain from enforcing the Utah Supreme Court's decision in State v. Perank, No. 860243 (Utah July 17, 1992), from exercising civil or criminal jurisdiction in a manner that conflicts with federal law within the exterior boundaries of the Uintah and Ouray Reservation, as those boundaries were set forth by the Tenth Circuit Court of Appeals in Ute Indian Tribe v. Utah, 773 F.2d 1087 (10th Cir. 1985) (en banc), cert. denied, 479 U.S. 994 (1986), or from interfering with the Tribe's exercise of criminal, civil and regulatory jurisdiction, consistent with federal and tribal law, within the exterior boundaries of the Uintah and Ouray Reservation, as those boundaries were set forth in Ute Indian Tribe, 773 F.2d at 1087. The foregoing stipulation was memorialized in an August 31, 1992 Order of the court.

At the August 6 hearing, the court also set a briefing schedule with respect to the Tribe's motion for injunctive relief. A hearing on the Tribe's motion was subsequently set for December 22, 1992 at 9:30 a.m.

Since that time, Robert P. Hagen, a defendant in a companion case to State v. Perank, filed a timely petition for a writ of certiorari with the United States Supreme Court, seeking review of the Perank/Hagen decisions of the Utah Supreme Court. The State of Utah has filed a brief urging the United States Supreme Court to grant certiorari. The local defendants have also filed an amicus curiae brief in support of certiorari, as have the States of

California, North Dakota, South Dakota, and Washington. The Ute Indian Tribe filed an amicus curie brief opposing certiorari, citing the current proceedings before this court as a reason for denying certiorari. On December 7, 1992, the United States Supreme Court entered an Order in Hagen v. State of Utah, inviting the United States Solicitor General to file a brief expressing the views of the United States.

In light of the petition now before the United States Supeme Court concerning Hagen v. State of Utah, this court vacates, on its own motion, the hearing for injunctive relief set for December 22, 1992, and reschedules the matter for April 14, 1993 at 9:30 a.m, pending the decision of the United States Supreme Court. As set forth above, the State and local defendants have stipulated not to enforce or take any action in reliance on the Perank/Hagen cases pending the outcome of the proceedings before the United States Supreme Court. The Utah Supreme Court has also stayed the remittitur in the Perank/Hagen cases. Thus, the Tribe and its members are under no immediate threat of any action by the State of Utah, and their interests will not be impaired by the limited postponement of the hearing pending disposition of the certiorari petition by the United States Supreme Court.

This court believes that the preferable avenue to resolve the conflict between state and federal courts in this regard is to have the United States Supreme Court decide the issue on petition before it. See, e.g., District of Columbia Court of Appeals v. Feldman,

460 U.S. 462 (1983). However, if certiorari is denied, the instant proceedings can proceed in relatively short order.

IT IS SO ORDERED.

Dated this 17 day of December, 1992.

BY THE COURT:

BRUCE S. JENKINS, CHIEF JUDGE
UNITED STATES DISTRICT COURT

No. 92-6281

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

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ROBERT P. HAGEN,

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vs.

STATE OF UTAH,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UTAH SUPREME COURT

CERTIFICATE OF SERVICE

I hereby certify that one true and accurate copy of the accompanying SUPPLEMENTAL BRIEF FILED BY PETITIONER was mailed this 2 day of April, 1993, postage prepaid to the following:

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